



TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Wayne Scott
Executive Director

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November 24, 1997

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DEC 04 1997

FILE # 112-39954-97

I.D. # 39954

Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711

Opinion Committee

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

NO. 295 549 279

RQ-1043

RE: Request for Opinion on Mandatory Tuberculosis Screening
For TDCJ Employees/Volunteers
LA96-0509-0323

FILE # _____

I.D. # _____

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OPEN RECORDS SECTION

Dear General Morales:

The Texas Department of Criminal Justice ("TDCJ") requests your opinion on whether it can adopt a policy of mandatory tuberculosis ("TB") screening for TDCJ employees/volunteers.

Although Section 501.060(a) of the Texas Government Code seems to authorize mandatory TB screening of all TDCJ employees and volunteers, arguably Section 501.060(b) limits such screening to employees of the Institutional Division of TDCJ (along with employees of certain correctional managed care plans) who request such screening. The TDCJ General Counsel has opined that the apparent conflict between subsection (a) and subsection (b) of this TB screening statute precludes the adoption of a mandatory TB screening policy for all employees and volunteers.

While we believe that the apparent conflict between subsection (a) and subsection (b) must be addressed by the legislature before mandatory TB screening of all TDCJ employees/volunteers can be implemented, because of the urgency of the health concerns involved, we felt compelled to seek your advice on this critical issue.

In 1993, the 73rd Legislature enacted Senate Bill 57 which added Government Code Section 501.059 and Chapter 89 to Subtitle D, Title 2, Health and Safety Code. At that time, a strong argument could be made that by operation of the new provisions contained in the Government Code and Health and Safety Code, TB screening and treatment was mandatory for TDCJ employees/volunteers.

However, in 1995, the 74th Legislature enacted House Bill 1696 which amended Government Code Section 501.059 by (1) renumbering that statute to Section 501.060; and (2) more significantly, adding subsection (b) which unequivocally states that an employee (volunteers not included) of the Institutional Division must request TB screening (emphasis added). In essence, the previous statute (Section 501.059) became subsection (a) of the new statute, and the new subsection (b) contained the provisions concerning TB screening by the Institutional Division. The result is the current Section 501.060. Were it not for the passage of HB 1696 in 1995, we believe that mandatory TB screening

would be legally supported by the old statute (Section 501.059). The 75th Legislature did not clarify the current statute during the session which ended June 2, 1997.

Subsequent to the passage of SB 57 in 1993, the Texas Department of Health promulgated new rules to implement the provisions of SB 57. The new rules, adopted to be effective March 15, 1994, are found in the Texas Administrative Code at 25 TAC § 97.171 et seq. These rules describe in great detail the required procedures incident to mandatory screening and treatment of TDCJ employees and volunteers "who share the same air space with inmates on a regular basis (more than 30 hours per month)." To further confuse the issue, the aforesaid rules have not been repealed nor modified since the passage of HB 1696 in 1995.

Thank you for your attention to and consideration of this matter. If you have any questions or need further information or briefing on this opinion request, please do not hesitate to contact Cynthia N. Milne, TDCJ Deputy General Counsel, at (409) 294-2140.

Sincerely,


Wayne Scott
Executive Director

c: Art Mosley
Carl Reynolds
James Riley
Michael Warren, M.D.
Lannette Linthicum, M.D.